

# Portable Audio/Video Recorders-Body Worn Camera

## 420.1 INTRODUCTION

With the goal of enhancing public trust and accountability to provide the highest level of professional service, the Dayton Police Department utilizes the advancement of technology. To further achieve this goal, body-worn cameras will be used for the purpose of documenting evidence and accurately capturing contacts between members of the department and the public. The Dayton Police Department is committed to the utilization of body-worn cameras as a means to reach this goal.

## 420.2 PURPOSE

The primary purpose of using body-worn cameras (BWC) is to capture evidence arising from police-citizen encounters. This policy sets forth guidelines governing the use of body-worn cameras and administering the collected data. Compliance with these guidelines is mandatory, but it is recognized that officers must also attend to other primary duties and the safety of all concerned, sometimes in circumstances that are tense, uncertain, and rapidly evolving. The use of this technology will add a higher level of transparency of the professional services provided by the Dayton Police Department. This device will also aid in the documentation of events to be used in an evidentiary manner. There needs to be an understanding that the camera view will not capture the entire incident or event, thus it cannot be construed that images are a complete representation of actions by officers and citizens.

## 420.3 POLICY

It is the policy of this department to authorize and require the use of department issued BWCs as set forth below, and to administer BWC data as provided by law. This policy governs the use of BWCs in the course of official duties. It does not apply to the use of squad-based mobile video (dash-cam) recording systems. The Chief of Police or their designee may supersede this policy by providing specific instructions for BWC use to individual officers and department members, or providing specific instructions pertaining to particular events or specialized details.

## 420.4 DEFINITIONS

**Definitions related to this policy include:**

**Activate** - any process which causes the BWC system to transmit or store video or audio data outside of the buffering feature.

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**Adversarial** - means a law enforcement or department member encounter with a person that becomes confrontational, during which at least one person expresses anger, resentment, or hostility toward the other, or at least one person directs toward the other, verbal conduct consisting of arguing, threatening, challenging, swearing, yelling, or shouting. Encounters in which a citizen demands to be recorded or initiates recording on his or her own are deemed adversarial.

**Auto-tagging** - the ability for the BWC data management system to automatically associated computer aided dispatch events (CAD) to BWC events.

**Body-worn camera (BWC)** - means a device worn by an officer that is capable of both video and/or audio recording of the officer's activities and interactions with others or collecting digital multimedia evidence as part of an investigation and is provided in Minn. Stat. 13.825.

**Evidentiary value** - means that the information may be useful as proof in a criminal prosecution, related civil or administrative proceeding, further investigation of an actual or suspected criminal act, or in considering an allegation against a law enforcement agency or officer.

**General citizen contact** - means an informal encounter with a citizen that is not and does not become law enforcement-related or adversarial, and a recording of the event would not yield information relevant to an ongoing investigation. Examples include, but are not limited to, assisting a motorist with directions, summoning a tow truck, or receiving generalized concerns from a citizen about crime trends in his or her neighborhood.

**Law enforcement related information** - means information captured or available for capture by use of a BWC that has evidentiary value because it documents events with respect to a stop, arrest, search, citation, or charging decision.

**Minnesota Government Data Practices Act (MGDPA)** - refers to the Minnesota Government Data Practices Act, Minn. Stat. 13.01, et seq.

**Official duties** - for purposes of this policy, means that the officer is on duty and performing authorized law enforcement services on behalf of this department.

**Records retention schedule** - refers to the General Records Retention Schedule for Minnesota Cities.

**Signal** - a device and add-on feature of the BWC system that activates the BWC camera when an officer's firearm or Taser is removed from their duty holster.

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**Unintentional recorded footage** - is a video and/or audio recording that results from an officer's inadvertence or neglect in operating the officer's BWC, provided that no portion of the resulting recording has evidentiary value. Examples of unintentionally recorded footage include, but are not limited to, recordings made in police department locker rooms, restrooms, and recordings made while officers were engaged in conversations of a non-business, personal nature with the expectation that the conversation was not being recorded.

#### **420.5 USE AND DOCUMENTATION**

a. Officers and department members will use only department-issued BWCs in the performance of official duties for this department or when otherwise performing authorized law enforcement services as an employee of this department (e.g., Contracted Police Services).

b. Officers and department members who have been issued BWCs shall operate and use them in accordance with this policy.

c. Officers and department members shall conduct a function test of their issued BWC at the beginning of each shift to make sure the devices are operating properly. Officers or department members noting a malfunction during testing or at any other time shall promptly report the malfunction to the officer's or department member's supervisor and obtain a functioning device as soon as reasonably practical.

d. Officers and department members should wear their issued BWC in an approved, conspicuous location on their body. Uniformed officers shall wear their issued BWC on their uniform shirt or jacket (if worn) in a position near their upper center chest area.

e. Officers and department members performing uniformed duties and carrying a firearm shall utilize a signal device on their holster. Officers performing non-uniformed duties may wear a signal device at their discretion.

f. Officers and department members must document BWC use and non-use as follows:

1. Whenever an officer makes a recording, the existence of the recording shall be documented.
2. If an event that is required to be recorded under this policy is not captured or only a part of the activity is captured, the officer must document the circumstances and reasons for not recording in an incident report or CAD notes, and report it immediately to a supervisor. Supervisors shall review these reports and may initiate any corrective action deemed

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necessary. A supervisor's corrective action shall be documented and forward to the Chief of Police or designee.

g. The Department will maintain the following records and documents relating to BWC use, which are classified as public data:

1. The total number of BWCs owned or maintained by the agency.
2. A daily record of the total number of BWCs actually deployed and used by officers.
3. The total amount of recorded BWC data collected and maintained.
4. This policy, together with the records retention schedule.
5. An accounting of when the Chief of Police or their designee allows for any deviation of the policy, as described in section 330.3.

#### **420.6 GENERAL GUIDELINES FOR WEARING AND RECORDING WEARING**

a. Uniformed officers and uniformed department members shall wear a BWC.

b. Officers and department members assigned to a non-uniformed position who wear plain clothes or civilian attire (e.g. detectives) shall wear a BWC as described below. Officers and department members in this section wearing a BWC shall activate a BWC as required below and may wear an approved BWC at any time a supervisor or member believes the device may be useful.

1. When involved in events described under 330.5 and there is adequate time to safely retrieve and don the BWC.
2. When involved in events described under 330.5 and clearly identifiable as a police officer or department member and wearing attire that would lead a reasonable person to believe they are an officer or department member. Examples include wearing a uniform or a jacket or vest with police markings or insignia.

c. Non-uniformed and uniformed officers assigned to School Resource Officer (SRO) duties shall wear a BWC. SRO's shall activate a BWC in accordance with 330.5.

#### **RECORDING**

a. This policy is not intended to describe every possible situation in which the recorder should be used, although there are many situations where its use is appropriate. Members should

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activate the recorder any time the member believes it would be appropriate or valuable to record an incident and/or public interaction.

b. Officers shall activate the BWC when anticipating that they will be involved in, become involved in, or witness other officers of this agency or any other agency involved in a pursuit, stop of a motorist or pedestrian, search, seizure, arrest, use of force, adversarial contact, and during other activities likely to yield information having evidentiary value.

c. Officers and department members have discretion to record or not record general citizen contacts.

d. Officers and department members have no affirmative duty to inform people that a BWC is being operated or that the individuals are being recorded. If asked, officers and department members should inform those inquiring that audio-video recording equipment (BWC) is in use, unless doing so would be unsafe for the officer, department member or members of the public.

e. Once activated, the BWC should continue recording until the conclusion of the incident or encounter, or until it becomes apparent that additional recording is unlikely to capture information having evidentiary value. The officer or department member having charge of a scene shall likewise direct the discontinuance of recording when further recording is unlikely to capture additional information having evidentiary value.

f. If the recording, including audio, is discontinued while an investigation, response, or incident is ongoing, officers or department members shall state the reasons for ceasing the recording on camera before deactivating their BWC or muting the audio. If circumstances change, officers shall reactivate their cameras or audio as required by this policy to capture information having evidentiary value.

g. Officers and department members shall not intentionally block the BWC's audio or visual recording functionality to defeat the purposes of this policy.

h. Notwithstanding any other provision in this policy, officers and department members shall not use their BWCs to record personnel during non-enforcement related activities, such as pre- and post-shift time in locker rooms, roll call, during meal breaks, or during other private conversations, unless recording is authorized as part of an administrative or criminal investigation.

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- i. Officers or department members shall notify their immediate supervisor of any recorded event to be of value for administrative review.

#### **WEARING AND RECORDING EXCEPTIONS**

- a. Officers of this department working in an undercover capacity or officers who are assigned to or assisting a drug task force (DTF), violent crime enforcement team (VCET), or other multi-jurisdictional task force that routinely have officers working in an undercover capacity will adhere to the BWC policy adopted by the task force agency they represent. Interactions with confidential informants should generally not be recorded.
- b. Officers assigned to command level or administrative duties as designated by the Chief of Police are generally not required to wear a BWC.
- c. Officers or department members wearing a uniform for ceremonies, funerals, awards presentation or other similar events are not required to wear a BWC.
- d. Officers and department members attending training, meetings, presentations, or court proceedings are not required to wear a BWC.
- e. Volunteer Reserve Officers are not required to wear a BWC.
- f. All officers and department members need not activate their cameras when it would be unsafe, impossible, or impractical to do so, but such instances of not recording when otherwise required must be documented as specified in the Use and Documentation guidelines, section 330.5. Officers and department members shall activate their BWC once it is safe and practical to do so if a portion of the events may still be captured on their BWC

#### **420.7 SPECIAL GUIDELINES FOR RECORDING**

Officers or department members may, in the exercise of sound discretion, determine:

- a. To use their BWCs to record any police-citizen encounter if there is reason to believe the recording would potentially yield information having evidentiary value, unless such recording is otherwise expressly prohibited.
- b. To use or not use their BWCs to take recorded statements from persons believed to be victims of or witnesses to crimes. Officers must consider the needs of the investigation

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and the individual. Officers may choose alternative methods to recording or documenting these statements if they believe a BWC may inhibit the investigation. This should include the following types of incidents:

1. Criminal Sexual Conduct
2. Human Trafficking
3. Juveniles who are the victim or witness to a violent crime or abuse

b. To use or not use their BWC to take recorded statements from persons believed to suspects in a crime if the presence of a BWC could inhibit the person providing a voluntary statement. Alternative recording methods should be considered. Nothing in this section exempts officers from recording statements as required by law.

c. For plain clothes officers, such as investigators, to not utilize a BWC for recording statements from suspects, victims, or witnesses when the officer or department member feels the presence of the BWC is not the best method for documenting the statement. Alternative recording methods should be considered. Nothing in this section exempts officers from recording statements as required by law.

d. To not record in hospitals, detox or mental health care facilities, juvenile detention centers, and jails unless the officer anticipates witnessing a criminal event, being involved in or witnessing an adversarial encounter, or use-of-force incident.

f. To not record persons being provided medical care unless there is reason to believe the recording would document information having evidentiary value. When responding to an apparent mental health crisis or event, BWCs shall be activated as necessary to document any use of force and the basis for it, and any other information having evidentiary value, but need not be activated when doing so would serve only to record symptoms or behaviors believed to be attributable to the mental health issue.

g. To deactivate their BWC during the transport of an arrestee or other individual if the person is secured in the rear seat of the squad car and the squad-based audio/video system is recording.

h. To deactivate their BWC while on a perimeter position until such time an officer or department member anticipates witnessing a criminal event, being involved in or witnessing an adversarial encounter, use-of-force incident, or anything of evidentiary value.

i. Many portable recorders, including BWCs and audio/video transmitters, emit radio waves that could detonate an explosive device. Therefore,

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these devices should not be used where an explosive device may be present.

#### **420.8 DOWNLOADING AND LABELING DATA**

a. Each officer or department member using a BWC is responsible for transferring or assuring the proper transfer of the data from his/her BWC by the end of their shift. However, if the officer or department member is involved in an officer-involved shooting, critical incident, in-custody death, or other law enforcement activity resulting in death or great bodily harm, a supervisor shall take custody of the BWC and assume responsibility for transferring the data from it as directed by the Chief of Police or designee.

b. Officers and department members shall verify that the proper ICR# is associated to each event. Officers and department members shall verify that the proper ICR# is associated with the BWC data as soon as practical.

c. If the event contains any of the following types of information within an event, the officer or department member shall change the event label to accurately reflect the required retention:

1. **Evidentiary/Arrest/Criminal** - An event where the information may be useful as proof in a criminal prosecution, related civil or administrative proceeding, further investigation of an actual or suspected criminal act, arrest or in considering an allegation against a law enforcement agency or officer.
2. **Non-evidentiary** - The event did not contain information of evidentiary value and does not meet any other categories.
3. **Critical Incident** - An event where law enforcement action causes substantial injury, great bodily harm, or death. This also includes the discharge of a firearm by a law enforcement towards another person.
4. **Traffic – Warning** - An event where the officer or department member provides a written or verbal warning for a violation of traffic or parking laws.
5. **Traffic – Citation** - An event where an officer or department member issues a citation for a petty misdemeanor violation of traffic or parking laws.
6. **Squad Crash** - A motor vehicle crash involving a vehicle owned or operated by the police department.
7. **Adversarial** – An event involving contact with a citizen who is adversarial, as defined in section 425.2.1, and the event does not meet any other categories.
8. **Pending Review** - The event requires further review by a supervisor or records for proper categorization.
9. **Test/Demo/Accidental** - The event was recorded to test the functionality of the BWC, to demonstrate the device, or was inadvertently activated and a recording was not required.
10. **Uncategorized** - The event has not been categorized.



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11. **Use of Force** - An event where a department member applies force as defined in Policy 319.

d. Officers and department members should consult with a supervisor if in doubt as to the appropriate labeling.

e. Labeling and flagging designations may be corrected or amended based on additional information.

### **420.9 ADMINISTERING ACCESS TO BWC DATA**

a. Data subjects: Under Minnesota law, the following are considered data subjects for purposes of administering access to BWC data:

1. Any person or entity whose image or voice is documented in the data
2. The officer who collected the data
3. Any other officer whose voice or image is documented in the data, regardless of whether that officer is or can be identified by the recording

b. BWC data is presumptively private: BWC recordings are classified as private data about the data subjects unless there is a specific law that provides differently. As a result:

1. BWC data pertaining to people is presumed private, as is BWC data pertaining to businesses or other entities
2. Some BWC data is classified as confidential (see c below)
3. Some BWC data is classified as public (see d below)

c. Confidential data: BWC data that is collected or created as part of an active criminal investigation is confidential. This classification takes precedence over the "private" classification listed above and the "public" classifications listed below.

d. Public data: The following BWC data is public:

1. Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous.
2. Data that documents the use of force by a peace officer that results in substantial bodily harm.
3. Data that a data subject requests to be made accessible to the public, subject to redaction. Data on any data subject (other than a peace officer) who has not consented

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to the public release must be redacted if practicable. In addition, any data on undercover officers must be redacted.

4. Data that documents the final disposition of a disciplinary action against a public employee.

5. However, if another provision of the MGDPA classifies data as private or otherwise not public, the data retains that other classification. For instance, data that reveals protected identities under Minn. Stat. § 13.82, subd. 17 (e.g., certain victims, witnesses, and others) should not be released even if it would otherwise fit into one of the public categories listed above.

e. Access to BWC data by non-employees: Officers and department members shall refer members of the media or public seeking access to BWC data to a Records Management Technician, who shall process the request in accordance with the MGDPA and other governing laws. In particular:

1. An individual shall be allowed to review recorded BWC data about him or herself, and other data subjects in the recording, but access shall not be granted:

- i. If the data was collected or created as part of an active investigation.
- ii. To portions of the data that the agency would otherwise be prohibited by law from disclosing to the person seeking access, such as portions that would reveal identities protected by Minn. Stat. § 13.82, subd. 17.

2. Unless the data is part of an active investigation, an individual data subject shall be provided with a copy of the recording upon request, but subject to the following guidelines on redaction:

- i. Data on other individuals in the recording who do not consent to the release must be redacted.
- ii. Data that would identify undercover officers must be redacted.
- iii. Data on other officers who are not undercover, and who are on duty and engaged in the performance of official duties, may not be redacted.

f. Access by peace officers and law enforcement employees: No employee may have access to the Department's BWC data except for legitimate law enforcement or data administration purposes.

1. Officers may access and view stored BWC video only when there is a business need for doing so, including the need to defend against an allegation of misconduct or

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substandard performance. Additionally, Officers may review video footage of a typical law enforcement incident in which they were involved prior to preparing a report, giving a statement, or providing testimony about the incident. The exception will be officer involved-shootings or other critical incidents. The Chief of Police, or his/her designee, will determine whether officers involved in an officer involved-shooting or critical incident can review BWC video prior to preparing a written report or providing a statement. This decision will be made on a case by case basis.

2. Agency personnel shall document their access to stored BWC data at the time of each access. Agency personnel are prohibited from accessing BWC data for non-business reasons and from sharing the data for non-law enforcement related purposes, including but not limited to uploading BWC data recorded or maintained by this agency to public and social media websites.

3. Employees seeking access to BWC data for non-business reasons may make a request for it in the same manner as any member of the public.

g. Other authorized disclosures of data: Officers may display portions of BWC footage to witnesses as necessary for purposes of investigation as allowed by Minn. Stat. § 13.82, subd. 15, as may be amended from time to time. Officers should generally limit these displays in order to protect against the incidental disclosure of individuals whose identities are not public. Protecting against incidental disclosure could involve, for instance, showing only a portion of the video, showing only screen shots, muting the audio, or playing the audio but not displaying video. In addition:

1. BWC data may be shared with other law enforcement agencies only for legitimate law enforcement purposes that are documented in writing at the time of the disclosure.

2. BWC data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

#### **420.10 DATA SECURITY SAFEGUARDS**

a. Officers or department members shall not use the BWC for personal use or for any other reason inconsistent with this policy.

b. Personally owned devices, including but not limited to computers and mobile devices, shall not be programed or used to capture, access, or view audio, video, or photographic data to include agency BWC data while on duty. Only devices authorized by the Department shall be used.

c. Officers or department members shall not intentionally edit, alter, or erase any BWC recording.

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d. As required by Minn. Stat. § 13.825, subd. 9, as may be amended from time to time, this agency shall obtain an independent biennial audit of its BWC program.

#### **420.11 AGENCY USE DATA**

a. Supervisors and other assigned personnel may access BWC data for the purposes of reviewing or investigating a specific incident that has given rise to an inquiry or concern about officer misconduct or performance.

b. Nothing in this policy limits or prohibits the use of BWC data as evidence of misconduct or as a basis for discipline.

c. Officers should contact their supervisors to discuss retaining and using BWC footage for training purposes. Officer objections to preserving or using certain footage for training will be considered on a case-by-case basis. Field training officers may utilize BWC data with trainees for the purpose of providing coaching and feedback on the trainees' performance.

#### **420.12 DATA RETENTION**

a. All BWC data shall be retained for a minimum period of 90 days. There are no exceptions for erroneously recorded or non-evidentiary data.

b. Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous, must be maintained for a minimum period of one year.

c. Data that documents the use of deadly force by a peace officer, or force of a sufficient type to require supervisory review, must be retained according to the department's record retention schedule.

d. Data documenting circumstances that have given rise to a formal inquiry against an officer must be retained according to the department's record retention schedule.

e. Other data having evidentiary value shall be retained for the period specified in the Records Retention Schedule. When a particular recording is subject to multiple retention periods, it shall be maintained for the longest applicable period.

f. Subject to Part g (below), all other BWC footage that is classified as non-evidentiary, becomes classified as non-evidentiary, or is not maintained for training shall be destroyed after 90 days.

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g. Upon written request by a BWC data subject, the Department shall retain a recording pertaining to that subject for an additional time period requested by the subject of up to 180 days. The Department will notify the requestor at the time of the request that the data will then be destroyed unless a new written request is received.

h. The Department shall maintain an inventory of BWC recordings having evidentiary value.

i. The Department will post this policy, together with its Records Retention Schedule, on its website.

#### **420.13 COMPLIANCE**

Supervisors shall monitor for compliance with this policy. The unauthorized access to or disclosure of BWC data may constitute misconduct and subject individuals to disciplinary action and criminal penalties pursuant to Minn. Stat. § 13.09.

The Chief of Police, or his/her designee, shall develop procedures for supervisors to periodically review usage of the BWC and compliance with this policy, and review the procedures with supervisors on an annual basis.

#### **420.14 TRAINING**

Officers and supervisors that use the BWC shall successfully complete an instruction and training session on this policy and the use and care of the equipment and media prior to being able to deploy the BWC. There shall be periodic training to ensure continued and effective use of the equipment and established policy and procedure.